

TAB

7 September 1950

MEMORANDUM FOR THE RECORD

SUBJECT: Missing Persons Act - Department of Defense Proposals -
Suggested Amendments

1. In the "Special Explanation for the Bureau of the Budget" submitted by the Department of Defense together with its draft amendments, the following statement is made: "The proposal also would extend to any military member while in a missing status, normal promotion opportunities." Mr. Pforzheimer checked with his contact in Defense and was informed that this is based upon the phrase in line 12 of page 2, "or may become entitled thereafter." Since the identical phrase appears in the present statute, it would not appear that this statute makes any change in promotion opportunities. In fact, when Mr. Pforzheimer inquired he was told by his Defense contact that the sentence in the Special Explanation would be stricken.

2. It would appear that the major rationale for having the determination of status (i.e., death, missing, etc.) made by the head of the department concerned is that the facts concerning the situation will generally be peculiarly within his knowledge. This same rationale would hold in the case of a dependent who becomes missing, etc., and although this dependent may not be in a fiscal relationship to the Government, there will be numerous other legal problems, the resolution of which would be simplified were a finding of status made. Not the least of these would be the determination of allowances payable to a principal, when conditioned upon the continuation of a dependency status, and questions concerning the devolution of estates (e.g., an employee's accounts might well turn upon a determination as to whether or not the wife is dead). The following additional section is proposed for the Act:

"A dependent of any person in active service, as defined by this Act, is a 'person' under this Act for the sole purpose of determining status as provided in sections 5 and 9, and any determination under those sections by the head of the department concerned shall be conclusive on all other departments of the Government; Provided, that nothing in this section shall be construed as conferring upon any dependent any right to pay, allowances or other compensation to which not otherwise entitled."

3. Defense has proposed an amendment to section 1 (a)(3) of the Act, which is stated in the "Sectional Analysis" to be for the purpose of extending the protection of the law under some circumstances to part-time, hourly or intermittent employees hired locally. I do not read the text of the amendment as accomplishing the stated purpose. On the contrary, it seems to me that part-time, hourly or intermittent employees resident of the places of their employment, are excluded without qualification, and that a further disability is imposed on full-time employees who happen to be residents of their places of employment abroad. Although my interpretation may be incorrect, I believe it would be well to resolve this ambiguity. A suggested CIA draft proposal is attached as Annex 1. The suggested text is intended to extend the coverage beyond that provided by the present Act, but only to an extent that appears acceptable to the Bureau of the Budget. The present Act provides in section 1 (a)(3):

"(3) Civilian officers and employees of departments and civilian officers and employees of the United States Naval Government of Guam, during such time as they may be assigned for duty or serving outside the continental limits of the United States or in Alaska, exclusive of part-time or intermittent employees or native labor casually hired on an hourly or per diem basis;"

Defense's initial redraft of 5 October 1953 is attached as Tab A. The comments of the Bureau of the Budget on this draft (dated 1 June 1954) are attached as Tab B. Defense's redraft of 1 April 1955 is attached as Tab C, and the Bureau of the Budget's comments on this draft (dated 18 July 1955) are attached as Tab D. The tabs are so affixed as to provide immediate reference to the various phrasings of and comments on section 1 (a)(3).

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ANNEX 1

Proposal I (using the language of the present statute, but extending "performance of duty" protection to part-time, intermittent or native employees):

(3) Civilian officers and employees of the departments, wherever serving, except that part-time or intermittent employees or native labor casually hired on an hourly or per diem basis shall be included only upon a determination by the head of the department concerned that the status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, within the meaning of section 2 of this Act, was the proximate result of employment by the department.

Proposal II (using the language of recent drafts, blanketing in part-time, hourly or intermittent employees for full protection, except that those who are resident at the place of employment would have only "performance of duty" protection):

(3) Civilian officers and employees of the departments, wherever serving, except that part-time, hourly or intermittent employees who are residents at or in the vicinity of their places of employment shall be included only upon a determination by the head of the department concerned that the status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force, within the meaning of section 2 of this Act, was the proximate result of employment by the department.

NOTE: The present Act covers only full-time employees serving abroad, so that any of the proposals so far made would result in coverage of a greater number of persons.